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No. 87-2074

Supreme Court, U.S.

FILED

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JOSEPH F. SPANIOLO, JR.
CLERK

IN THE
Supreme Court of the United States

A.H. ROBINS COMPANY, INCORPORATED,
Petitioner,
v.

WILMA M. MARESSA,
Respondent.

**BRIEF IN OPPOSITION TO THE PETITION
FOR A WRIT OF CERTIORARI**

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CERTIORARI SHOULD BE DENIED

Robins argues that certiorari should be granted and that this matter should be reviewed by the U.S. Supreme Court on the grounds that the Fourth Circuit Court of Appeals erroneously concluded that Rule 60 of the Federal Rules of Civil Procedure applies to this case and governs the decision of the Court below. Robins position is clearly without merit, for Bankruptcy Rule 9024 expressly provides that Rule 60 of the Federal Rules of Civil Procedure applies in cases under the Code. The initial motion was made and decided at the District Court level under Rule 60(b), and the Fourth Circuit Court of Appeals correctly decided that Rule 60(b) was the appropriate standard. Robins argument that Rule 60(b) does not apply to this case ignores the plain language of Rule 9024.

Bankruptcy Rule 9024 provides as follows:

Rule 9024. Relief from Judgment or Order

Rule 60 F.R.Civ.P. applies in cases under the Code except that (1) a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60(b), (2) a complaint to revoke a discharge in a chapter 7 liquidation case may be filed only within the time allowed by Section 727(e) of the Code, and (3) a complaint to revoke an order confirming a plan may be filed only within the time allowed by Section 1144 or Section 1330.

It is noteworthy that the statute expressly recites three exceptions to Rule 60's applicability to bankruptcy cases. Had Congress intended that Rule 60(b) should not apply to motions for leave to file claims against the estate outside of the bar date, it would have been a very simple matter for it to have added a fourth exception to Rule 9024. The Legislative Branch having failed to so provide, it would be inappropriate for the Judicial Branch to graft such provisions onto the clear language of the statute. Clearly Congress intended to subjugate the goal of the bankruptcy rules to promote certainty and finality to the broader purpose of Rule 60(b)(1) that considerations of the need to

establish finality " 'should never be used to thwart the objectives of the blind goddess' of justice itself". *Compton v Alton Steamship Co.*, 608 F 2d 103 (citing *Bougher v Secretary*, 572 F 2d 976, 978-79 (3rd Cir. 1978).

For all of these reasons, it is respectfully submitted that there is no legal question of any merit to be reviewed by the U.S. Supreme Court presented on this petition, and certiorari should therefore be denied.

Respectfully submitted,

/s/ DEAN J. HIGGINS

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